

Appl. No. 10/665,670
Docket No. 9042M
Response dated January 23, 2009
Reply to Office Action mailed on July 23, 2008
Customer No. 27752

REMARKS

Claims 1, 2, 4, 5, 7-14, and 19-29 are pending in the present application. Claims 3, 6, 15-18 were canceled by prior amendments. A notice of appeal has been filed concurrently with this response.

Rejection under 35 U.S.C. §103(a) Chambers (U.S. Patent No. 5,612,307, hereinafter referred to as "Chambers") in view of Hayward (U.S. Patent No. 6,534,456 hereinafter referred to as "Hayward")

Claims 1, 2, 4, 5, 7-14 and 19-29 are rejected under 35 U.S.C. §103(a) as being obvious over Chambers in view of Hayward.

The Office Action states that the Chambers discloses an aqueous composition that comprises a cleansing portion and a moisturizing portion but fails to teach physical contact between the two phases. (*See* Office Action, pages 2-3). The Office Action states that the lamellar phase and isotropic phase compositions of the Hayward are in physical contact within a single, partionless container. (*See* Office Action, page 3). The Office Action states that the Hayward teaches that the components can be packaged without barriers when the viscosities of the two phases are compatible. (*See* Office Action, pages 3-4). The Office Action states that the rheological behavior of the cleansing surfactants depend on the microstructure of the surfactants. (*See* Office Action, page 4). The Office Action states that the Hayward suggests ways to control the flow properties of both phases so as to be able to pump the compositions together. (*See* Office Action, page 4). The Office Action states that it would have been obvious to one of an ordinary skill in the art at time of the instant invention to optimize the rheological properties of the phases and thus, extrude them together as stripes and still be able to maintain the viscosity. (*See* Office Action, page 4).

The Applicants respectfully traverse the rejection.

When a combination of references is used to support a rationale of obviousness, the combination of references cannot (1) change the principle of operation of the primary reference or (2) render the prior art unsatisfactory for its intended purpose. As to the change of principle of operation, the MPEP states that "[i]f the proposed modification or

combination would change the principle of operation of the prior art invention being modified, then the teachings of the reference are not sufficient to render the claims *prima facie obvious*.” MPEP §2143.01 VI citing *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959). As to rendering the prior art unsatisfactory, the MPEP also states that “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, there is no suggestion or motivation to make the proposed modification.” MPEP §2143.01 V citing *In re Gordon*, 733 F.2d 900, 221 U.S.Q.P. 1125 (Fed Cir. 1984)

First, the Applicants respectfully submit that the teachings of Chambers and Hayward are not sufficient to render the claims *prima facie obvious* because the principle of operation of Chambers would be modified in view of Hayward. In Chambers, the benefit agent and the base formulation (which comprises surface active agents) are physically separate. (See Chambers, column 12, lines 1-4). Chambers clearly teaches “the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition.” Chambers, column 1, lines 63-65. Moreover, Chambers teaches that the surface active and benefit agent active are dispensed in a predetermined ratio to achieve the effect desired. (See Chambers, column 2, lines 4-11). Chambers states that:

[t]he surface active agent and the benefit agent are dispensable from a single packaging means in a predetermined ratio according to the use for which the composition is intended. An advantage of dispensing the surface active agent and the benefit agent in combination is that it avoids the inconvenience of having to post mix the two components. This is particularly advantageous when the separate components of a composition need to be mixed in precise ratios in order to achieve the desired effect. Chambers, column 2, lines 4-11 (emphasis added).

Conversely, the Hayward teaches that both the lamellar and isotropic compositions can be contained within a single partitionless container and these compositions do not need be dispensed in a predetermined ratio to have a desired effect. Hayward states that “[s]queezing a flexible container holding the inventive product [by] a single pump, or the like, is preferably used to dispense the product.” Hayward, column 4, lines 26-28. In fact, Hayward

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states that an “advantage of the inventive product is the fact that separate lamellar and isotropic compositions having specific functions, e.g. cleansing and moisturizing the skin may be simultaneously dispensed in a partitionless container.” Hayward, column 4, lines 34-37 (emphasis added).

Modifying Chambers by placing the compositions in a partitionless package in view of Hayward would change the principle of operation of the Chambers. This modification would not allow the compositions of Chambers to be dispensed separately in a predetermined and precise ratio which achieves the desired effect of the invention. (*See* Chambers, column 2, lines 4-11). Because the principle of operation of Chambers would be changed, the combination of references is not sufficient to render the claims obvious. (*See* MPEP §2143.01 VI).

Second, the Applicants respectfully submit that there is no motivation to modify Chambers with Hayward because the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose. Chambers warns that the separation of the surfactant and benefit phase “avoids adverse interactions which may occur between these two components and resulting in ineffective deposition of the benefit agent.” Chambers, column 1, lines 65-67. Because Chambers alleges that “ineffective deposition of benefit agent” would result when the compositions were placed in physical contact, as in the partitionless container of the Hayward, this modification would render the compositions unsatisfactory for their intended purpose. Thus, the modification of Chambers by Hayward is not suggested by the prior art. (*See* MPEP §2143.01 V).

Therefore, the combination of the cited references is not sufficient to render the claims obvious.

Rejection Under 35 U.S.C. §103(a) Chambers in view of Hayward in view of Frantz et al
(hereinafter referred to as “Frantz”)

Claims 10-13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Chambers in view Hayward in view of Frantz. As stated above, the combination of Chambers and Hayward do not teach or suggest the claimed invention in the independent claims from which 10-13 depend. Thus, the details of Frantz need not be addressed.

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Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested. Should any fee be required, please charge such fee to Procter & Gamble Deposit Account No. 16-2480.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

Date: January 23, 2009
Customer No. 27752

By /Bridget Murray/
Bridget Murray
Registration No. 52,555
(513) 983-9357